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E.O. 12958: DECL: 11/09/2015  
TAGS: [KJUS](#) [SCUL](#) [KBIO](#) [ETRD](#) [MARR](#) [CI](#)  
SUBJECT: CONSTITUTIONAL COURT PRESIDENT ENVISIONS PROGRAM  
WITH US SUPREME COURT, TALKS IPR AND ARTICLE 98 WITH  
AMBASSADOR

REF: SANTIAGO 01615

Classified By: Ambassador Craig Kelly for reasons 1.4(b) and (d).

¶1. (U) Summary: Newly appointed Constitutional Court President Jose Luis Cea Egana called on the Ambassador on November 9. Cea expressed deep admiration and affection for the U.S. and said he would like to explore ways the Constitutional Court could work with the Embassy to promote democracy, freedom and justice. He expressed his desire to have a U.S. Supreme Court Justice, active or retired, or possibly a senior clerk, attend the Ibero-American Conference of Constitutional Court Judges planned for October 26-28, ¶2006. The Ambassador queried Cea about possible constitutional issues for Chile in negotiating an Article 98 agreement, and noted ongoing problems with respect to intellectual property rights in Chile. End Summary.

¶2. (U) Cea informed the Ambassador he had been appointed recently to the Constitutional Court (CC) for a nine-year term, and will serve as President of the court through 2009. Cea said the recent Constitutional reforms (reftel) gave the CC broader powers to apply constitutional judicial review to executive and legislative acts. Constitutionality questions can be brought by any acting judge, lawyers involved in litigation or criminal trials, an affected individual, or the CC itself can decide to intervene and rule on the constitutionality of a government or legislative act.

¶3. (U) Cea said he would like to initiate an exchange relationship between the U.S. Supreme Court and the CC. He asked that a Supreme Court Justice or senior clerk visit Chile to reinforce the juridical and institutional connections between our countries' judiciaries. He said that Justice Breyer had visited Chile in 2001 or 2002, and that Justice Scalia had been in Valdivia fifteen years ago. He believed that former Justice Sandra Day O'Connor had also visited Chile in the past. Cea said he had met Justice Scalia in 2002 and suggested he again visit Chile, but Scalia had demurred due to his busy schedule.

¶4. (U) Cea advised that Chile would host the Ibero-American Conference of Constitutional Court Judges planned for October 26-28, 2006. The main theme will be the power of judicial review. Cea said participation of a U.S. Supreme Court Justice, whether active or retired, would strongly support the conference and underline the groundbreaking role of the U.S. judicial system. He said it would be possible to develop other activities at universities and law schools to take advantage of the opportunity a U.S. Justice visit would represent for Chile. The Ambassador said it was an interesting proposal and suggested Cea investigate the possibility of asking a senior clerk or retired justice to participate, given the demands on serving justices.

15. (C) The Ambassador asked why Chile's accession to the International Criminal Court (ICC) would require a constitutional reform. Cea replied that in 2002, the CC ruled that ICC ratification was inconsistent with the Chilean Constitution in 24 areas. Cea said he would have dissented from the ruling if he had been on the court at the time, as the interpretation was based too strictly on the letter of the constitution, and his judicial philosophy required a broader interpretation of the document. The Ambassador's asked if an Article 98 agreement would also require judicial review. Cea replied that once the ICC reform passed, whether to enter an Article 98 would be a GOC decision, not a constitutional matter.

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INTELLECTUAL PROPERTY RIGHTS  
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16. (C) The Ambassador raised the U.S.-Chile Free Trade Agreement, noting that the only rough spot in the implementation had been protection of IPR. The Ambassador used the example of Chilean licensing authorities not only failing to respect U.S. patents, but (in the case of pharmaceuticals) actually using U.S. companies' submitted testing and safety data in deciding to license a pirated product. Cea said that he had performed a study 15 years ago showing that IPR was generally not well respected in Chile.

17. (C) Cea said operative laws on industrial and intellectual property (Chilean law draws a distinction) do

not effectively protect intellectual property rights enshrined in the Chilean Constitution. He said in his career as an academic he had argued for stronger IPR protections, and agreed with the Ambassador that IPR provisions in the FTA were not being respected. He added that some of the major fortunes in Chile had been made or increased through the violation of patent and copyright protections, and asserted the lack of judicial predictability was a widespread problem throughout Latin America, Africa and Asia. Although Chile was relatively better than many countries, it continued to have problems in this area, he concluded.

18. (C) Comment: Cea is a former Fulbright Scholar and Ford Foundation grantee. He has worked closely with Post on judicial reform assistance programs. He appears sincere in wanting to establish an institutional relationship between the Chilean Constitutional Court and U.S. Supreme Court. Post will look for ways to direct Cea's obvious enthusiasm into channels for cooperation.

KELLY